



IAC-FH-AR-V1

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/31103/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 12 January 2016**

**Decision & Reasons Promulgated
On 27 January 2016**

Before

UPPER TRIBUNAL JUDGE COKER

Between

SHAMSHIR-UL-ZAMAN KHAN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms F Beach

For the Respondent: Ms A Brocklesby- Weller

**EX TEMPORE
DECISION AND REASONS**

1. The appellant in this case withdrew his appeal under the Immigration Rules (including paragraphs 318B and 276ADE) against the First-tier Tribunal's decision of Judge McWilliams which was promulgated on 22 May 2015 following a hearing on 26 March 2015.
2. The remaining challenge to the decision can be characterised as a pure Article 8 challenge: namely that the judge has failed to reach a decision on the proportionality of the decision to remove him; failed to make proper

credibility findings on the evidence, the witness evidence and the documentary evidence that was before him, and that that fed into the proportionality decision; that there was a failure on the part of the judge to give reasoned findings as to why the relationship that the appellant has with his mother did not amount to family ties over and above the usual family ties such that Article 8 was engaged.

3. The appellant also asserted that there was a lack of reference to the psychiatric report and the impact of the removal on the mother of the appellant's removal from the UK. Although there is extensive reference in the decision to the evidence of the various witnesses and the documentary evidence and to the submissions made by both parties at the hearing this does not translate into specific findings.
4. The findings insofar as Article 8 are concerned are sparsely reasoned. There is no reasoned finding why the care the appellant claims he gives to his mother does not demonstrate family ties such as would engage Article 8. Given the extensive evidence that is quoted it would have been appropriate for a more detailed finding to be given.
5. Of more concern, however, is the approach of the judge to the carers' concession. The judge reviews the respondent's decision and makes a finding in paragraph 48 that the respondent was entitled to exercise her discretion in finding that there were not sufficiently compelling or compassionate grounds that would lead to a grant of leave to remain under the carers concession.
6. Whilst it is quite proper for the respondent to reach a conclusion and it may well be that the respondent reached a decision she was entitled to make, it is not the role of the Tribunal to *review* such a decision of the respondent. The role of the Tribunal is to take account of all the evidence before it and to reach a decision on that evidence.
7. This judge has not done that. Having made that finding in connection with the carer's concession he then goes on in paragraph 49 to consider the evidence in respect of the appellant's claim under Article 8 but refers only to the impact on the proportionality on removal on the appellant, not in terms of the relationship that he has with his mother or the extent to which his removal could affect the mother.
8. I am satisfied that the First-tier Tribunal Judge erred in law in failing to assess all of the evidence in the round and failing to give adequate reasons for the findings relied upon to find that the removal of the appellant to Tanzania was proportionate.

Notice of Decision

10. I therefore set aside the decision insofar as it relates to Article 8 only. The decision under paragraphs 317 and 276ADE of the Immigration Rules stands, the appellant having withdrawn his appeal under the Rules.

11. The Tribunal being required to make findings of fact with regard to Article 8 and in the light of the practice direction, this appeal is remitted to the First-tier Tribunal for a decision on the appeal under Article 8 to be made.



Signed
January 2016
Upper Tribunal Judge Coker

Decision delivered orally on 12th